



Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Hafida Lahiouel

AUDA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Pallavi Sekhri, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 3 February 2017, the Applicant pursuant to art. 30 of the Dispute Tribunal's Rules of Procedure, filed an application for interpretation of the meaning and scope of the Tribunal's final judgment, *Auda* UNDT/2017/007 ("the Judgment"), issued on 1 February 2017 in Case No. UNDT/NY/2015/062.

2. On the same day, the Tribunal also issued *Auda* UNDT/2017/006 in the Applicant's related Case No. UNDT/NY/2015/035. While the instant application pertains only to *Auda* UNDT/2017/007, the facts set forth fully in both judgments are interrelated and a full appreciation of the background to the Applicant's request for interpretation may be obtained by reading both judgments.

3. On 7 March 2017, the Respondent filed a reply urging the Tribunal to find the application inadmissible or, in the alternative, dismiss it on grounds that the Judgment is clear and no interpretation is warranted.

Background

4. The Judgment granted the Applicant's application challenging the decision of the then Under-Secretary-General of the Department of General Assembly and Conference Management ("USG/DGACM") to close, without further action, the Applicant's complaint that the then Assistant Secretary-General ("ASG/DGACM") engaged in conduct prohibited under ST/SGB/2008/5 (Prohibition of discrimination, harassment, including sexual harassment, and abuse of authority).

5. The Applicant sought, *inter alia*, rescission of the decision to close his case, or, in the alternative, an order that the fact-finding panel report be transferred for action to the Office of Human Resources Management ("OHRM").

6. With respect to the Applicant's requested relief, the Judgment states, in pertinent part, as follows:

91. [...] the Tribunal concludes that the Applicant has succeeded in showing that the decision to close the case of his complaint against the [ASG/DGACM] was tainted by procedural irregularities and was, thus, improper.

96. [...] The Tribunal further notes that the relief sought by the Applicant, namely rescission of the decision and a fresh investigation, can no longer be implemented as [...], the subject of the complaint, is no longer in the employ of the Organization, and investigations under ST/SGB/2008/5 cannot be conducted against persons who are not staff members of the Organization. The other alternative relief sought by the Applicant, namely referral of the case to OHRM, cannot be considered either for the same reason.

99. Having taken all the facts and circumstances of this case into consideration, as well as those determined in *Auda* UNDT/2017/006 and noting the Tribunal's award of USD5,000 in *Messinger* UNDT-2010-116 (affirmed in 2011-UNAT-123) for compensation for harm as a result of a breach of investigation related procedures, the Tribunal awards USD5,000 to the Applicant, which, together with this judgment, constitute adequate compensation for the harm that he suffered.

Applicant's submissions

7. The Applicant's principal contentions may be summarized as follows:

a. It is not unreasonable to contemplate that the ASG/DGACM may gain employment with the Organisation in the future. In such a case, the basis upon which the Tribunal did not consider his requested relief namely, rescission of the decision and a new investigation, or in the alternative, referral of the case to the Office of Human Resources Management (OHRM), would no longer hold true;

b. The Tribunal's findings in para. 91 established a legal right for the Applicant at present and in the future. The Applicant seeks interpretation of the meaning, and clarity on the scope of execution of the Judgment should the ASG/DGACM gain future employment with the Organisation.

c. The Applicant seeks clarity as to whether the reliefs sought shall automatically take place should the ASG/DGACM gain future employment,

“[o]therwise, the Applicant seeks clarity as to the actual decision [...] in such a situation.”

Respondent’s submissions

8. The Respondent’s principal contentions may be summarized as follows:
 - a. The application is premature because a request for interpretation cannot be filed prior to the expiration of the time limit for filing an appeal. Only once the deadline to appeal has expired can it be determined whether or not the matter is under consideration by the Appeals Tribunal. The Respondent will appeal the Judgment to the Appeals Tribunal. In the alternative, the Respondent argues that the application is without merit since the Judgment is clear and does not require an interpretation.

Consideration

9. Article 12.3 of the Dispute Tribunal’s Statute states:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or the scope of the final judgment, provided that it is not under consideration by the Appeals Tribunal.
10. Article 30 of the Dispute Tribunal’s Rules of Procedure states:

Either party may apply to the Dispute Tribunal for an interpretation of the meaning or scope of a judgment, provided that it is not under consideration by the Appeals Tribunal. The application for interpretation shall be sent to the other party, who shall have 30 days to submit comments on the application. The Dispute Tribunal will decide whether to admit the application for interpretation and, if it does so, shall issue its interpretation.
11. The Dispute Tribunal first considers whether the Applicant’s motion for interpretation is receivable, in light of the Respondent’s assertion that a request for interpretation cannot be filed prior to the expiration of the time limit for filing an appeal to the Appeals Tribunal. Article 30 of the Dispute Tribunal’s Rules of Procedure and art. 12.3 of the Dispute Tribunal’s Statute both provide that a party

may request an interpretation of the meaning or scope of a final judgment, “provided that it is not under consideration by the Appeals Tribunal.” The rules noted above do not preclude a party from seeking interpretation of a judgment before the deadline for appeal. It is possible that the very reason a party may request an interpretation of a Judgment is to clarify a party’s understanding of the Judgment in order to assess if the party will appeal. The Respondent indicates that he will appeal the Judgment which “would render the Dispute Tribunal *functus officio*.” To date, the Judgment has not yet been appealed and lack of jurisdiction is, thus, not a bar to receivability.

12. This Tribunal now considers whether the application is receivable in accordance with settled jurisprudence on interpretations of judgments. The United Nations Appeals Tribunal has held that an application for interpretation of judgment is receivable if the operative part of the judgment gives rise to uncertainty or ambiguity about its meaning (*Shanks* 2010-UNAT-065; *Dzuverovic* 2014-UNAT-490). The Appeals Tribunal has further held that an application for interpretation of judgment is not receivable if its purpose is to re-examine or comment on the decision and that the remedy for a party who is dissatisfied with a Dispute Tribunal’s judgment is to file an appeal against the judgment (*Kasmani* 2010-UNAT-064; *Abbasi* 2013-UNAT-315).

13. The Dispute Tribunal has held that an application for interpretation of a judgment is for the purpose of clarifying the decision itself (*Kalashnik* UNDT/2015/113). In *Kalashnik*, the Dispute Tribunal, citing the Administrative Tribunal of the International Labour Organisation’s Judgment No. 2483, stated that “the purpose of an application for interpretation is not to seek further justification of the grounds for a given decision, but to obtain clarification of the decision itself.” Similarly, in *Kisia* UNDT/2016/176, the Dispute Tribunal considered the meaning of the judgment to entail its findings and conclusions, which should be clear from any ambiguity insofar as the will of the Tribunal or the findings leading to its decision.

14. The Applicant in referring to paras. 91, 96, and 99 of the Judgment, has not identified any part therein that he considers to be unclear or ambiguous. The Dispute Tribunal finds that the meaning of the Judgment leaves no reasonable doubt as to the

will of this Tribunal or the arguments leading to this Tribunal's decision. This Tribunal was clear in para. 96 of the Judgment that rescission of the decision, a fresh investigation, and referral to OHRM cannot be implemented as the subject of the complaint is no longer employed by the Organization.

15. The crux of the Applicant's request is for the Tribunal to make an additional determination as to whether his reliefs sought, "shall automatically take place should [the subject] gain future employment [...]." The Applicant, thus, "seeks clarity as to the actual decision of the Dispute Tribunal in such a situation." The Applicant is presenting a hypothetical scenario—the then ASG/DGACM's possible future return to employment with the United Nations—and is, in essence, requesting the Dispute Tribunal to revise its judgment to include a decision based on a possible future scenario concerning which there is no instant case or controversy before the Tribunal. Accordingly, as this is not a request for interpretation of the relief granted, the Tribunal rejects the application.

Conclusion

16. The scope and meaning of the decision and relief granted to the Applicant, and the reasons therefore, are clear and no interpretation is warranted. The application is, therefore, rejected.

(Signed)

Judge Alexander W. Hunter, Jr.

Dated this 31st day of March 2017

Entered in the Register on this 31st day of March 2017

(Signed)

Hafida Lahiouel, Registrar, New York